

Remarks

Reconsideration of remaining claims 1-6, 9-17 and 21-30 is respectfully requested.

In the Office action dated April 21, 2004 (application Paper No. 10), the Examiner objected to the oath with respect to its lack of claim to priority. A new oath has been executed by a group of the inventors and is being submitted with this response. We have been unable to contact two of the inventors for re-execution of the Declaration and are enclosing the “not deliverable” replies received in these instances. The claims were rejected under 35 USC §§ 102(e) and 103(a). The Examiner’s rejections will be discussed below in the order appearing in the Office action.

35 USC § 102(e) Rejection - Claims 1, 3-7 and 13-30

The above-cited claims were first rejected by the Examiner under 35 USC 102(e) as being anticipated by US Patent 6,385,773 (Schwartzman). In particular, the Examiner cited Schwartzman as teaching “a system and method for switching frequencies in the presence of ingress noise”, where Schwartzman at column 9, lines 59-62 is cited as teaching “marking the frequency band and time interval ‘in which the ingress events exceeds a predetermined threshold’” and the “claimed creation of a time/frequency map of the ingress events containing results of times and frequencies above a pre-determined threshold” is cited by the Examiner as taught at column 12, beginning at line 41 of Schwartzman.

In response, applicants assert that Schwartzman does not disclose or suggest an arrangement that simultaneously evaluates “ingress” noise as a function of both “frequency” and “time” so as to generate a map including both aspects, with the ability to then separately defined “wideband ingress” noise as noise occurring across the entire frequency range. The Examiner refers to FIG. 3, element 302, where spectrum analyzer is used to “examine entire power level of upstream band and divides into bandslices” as teaching the “summing” across frequency channels and determining wideband noise. Applicants assert that such is not the case. As stated in the specification at column 10, beginning at line 36, “the spectrum analyzer performs a noise-level analysis, discussed

below, of *one upstream frequency channel at a time*". The premise of Schwartzman is to monitor each channel separately ("one channel at a time"), looking for an unused channel with little or no noise. In contrast, the premise of the present invention is to sum the noise across "the entire frequency range" and identifying wideband ingress noise, which affects each frequency channel.

Without this teaching, applicants assert that Schwartzman cannot be found to disclose or suggest the arrangement of the present invention which requires "summing" across the entire frequency range to ascertain the presence of wideband ingress noise. Applicants therefore respectfully request the Examiner to reconsider this rejection and find claims 1, 3-6, 13-17 and 21-30 to be in condition for allowance.

35 USC § 103(a) Rejection - Claims 2 and 8-12

Claims 2 and 8-12 were next rejected by the Examiner under 35 USC 103(a) as being unpatentable over Schwartzman (as above). Without the teaching of summing across the entire frequency range to determine the presence of wideband ingress noise, applicants assert that Schwartzman cannot be found to render obvious the subject matter of the present invention. As discussed above, applicants assert that the intent of the present invention is to create a map including both time and frequency information, allowing one to simultaneously generate "ingress event" results as a function of both time and frequency and define the presence of wideband ingress events (i.e., ingress present in each frequency channel at the same time). In the case of Schwartzman, only frequency information is generated.

In light of this difference, applicants assert that Schwartzman cannot be found to render obvious the subject matter of the present invention as defined by claims 2 and 8-12. Applicants therefore respectfully request the Examiner to reconsider this rejection and find claims 2 and 8-12 to be in condition for allowance.

Summary

The present application contains claims 1-6, 9-17 and 21-30 where various claims have been amended to overcome the Examiner's rejections and a newly-executed

Declaration is submitted to overcome the Examiner's objection. Applicants believe that the case, in its present form, is now in condition for allowance and respectfully request an early and favorable response from the Examiner in that regard. If for some reason or other the Examiner does not agree that the case is ready to issue and that an interview or telephone conversation would further the prosecution, the Examiner is invited to contact applicants' attorney at the telephone number listed below.

Respectfully submitted,

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